

SERVED: August 18, 2005

NTSB Order No. EA-5173

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 17th day of August, 2005

MARION C. BLAKEY,
Administrator,
Federal Aviation Administration,

Complainant,

v.

LEE C. BEISSEL,

Respondent.

Docket SE-17051

ORDER DENYING RECONSIDERATION

Respondent seeks reconsideration of our decision in Administrator v. Beissel, NTSB Order No. EA-5153, served April 29, 2005. In that decision, we affirmed the law judge's dismissal of respondent's appeal from the Administrator's order of suspension. The law judge had found that respondent's appeal was late filed, and we affirmed, holding there was no good cause to accept the late appeal.

On petition, respondent claims that the Board applies its good cause standard unevenly, ruling more often in the Administrator's favor than in a respondent's favor. In support, respondent cites Ramaprakash v. FAA and NTSB, 346 F.3d 1121 (D.C. Cir. 2003). Respondent made this same argument on appeal to the Board, and we rejected it. Respondent offers no new reasons for us to change our views. Ramaprakash, as we noted in our prior decision, deals with the stale complaint rule. The good cause

7708A

standard there involves whether the FAA was reasonable in failing to pursue a case within 6 months from the event that allegedly caused the regulatory violation. In those cases, the burden is on the FAA to justify its action. In the case before us, the good cause standard requires that a respondent prove his failure timely to file a notice of appeal within the required time had a good cause.

We here found that the reasons for respondent's tardiness did not constitute good cause for his late filing. This is a question of fact, specific to each case. Whether the Board is applying this standard uniformly to notices of appeal and appeal briefs is determined by reviewing other cases involving late filing of notices of appeal and appeal briefs, not by comparing this case with other, entirely different types of cases that also happen to use the good cause test. Ramaprakash, infra, actually supports this conclusion, as the parties and the Court analyzed the reasonableness of our action in that case based on our actions in other stale complaint cases, not based on the universe of cases in which a good cause standard was used.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's petition for reconsideration is denied; and
2. The 180-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this order.¹

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS and HERSMAN, Members of the Board, concurred in the above order. HEALING, Member, did not participate.

¹ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).